

APPEAL NO. 010760

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 8, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) had not sustained a compensable injury on _____, and thus had no resultant disability. The hearing officer also determined that the claimant did not make a knowing election of remedies. The claimant appeals on sufficiency grounds and seeks reversal. The respondent (self-insured) responds and urges the hearing officer's decision and order be affirmed in all respects. The hearing officer's decision on the election of remedies issue has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant alleged to have injured her back while lifting, along with two other nurses, an obese patient from the bedside toilet back to the bed in her room at (hospital), where the claimant was employed as a registered nurse (RN). Evidence introduced at the CCH upon which the hearing officer could have relied to decide that the claimant sustained no compensable injury included a statement from one of the two workers who assisted in the lifting, who said that she did not observe, nor did the claimant complain, of any injury caused by that lifting. In addition, the evidence adduced at the hearing showed that the claimant left the hospital on November 10, 2000, but continued to work at her other job, at a nursing home, until November 22, 2000, the date she first sought medical treatment, and reported her injury to the hospital on November 27, 2000. The carrier introduced the statement of the x-ray technician at the hospital who examined the patient November 22, 2000, and he said that she told him she hurt her back while lifting a patient at the nursing home. In her testimony, the claimant never specifically described her duties at the nursing home, except to say that the duties did not involve the level of patient care as did those at the hospital. The hearing officer's decision is supported by the evidence.

With no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is

equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, the decision and order of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge